

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
PENSCO TRUST COMPANY
ZONING MAP AMENDMENT REPORT (#FZC-15-05)
SEPTEMBER 30, 2015

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Marquardt Surveying, on behalf of Pensco Trust Company, David E. Kaup IRA for a zoning map amendment in the Highway 93 North Zoning District. The proposed amendment would change the zoning of the subject property from ‘SAG-10 Suburban Agricultural’ to ‘SAG-5 Suburban Agricultural.’

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on October 14, 2015 in the 2nd Floor Conference Room of the Earl Bennett Building located at 1035 1st Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment.

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West, in Kalispell. Prior to the Commissioner’s public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Flathead County Clerk and Records Office at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

This space will contain an update regarding the October 14, 2015 Flathead County Planning Board review of the proposal.

B. Commission

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Owner/Applicants

Pensco Trust Company
David E. Kaup IRA
PO Box 173859
Denver, CO 80217

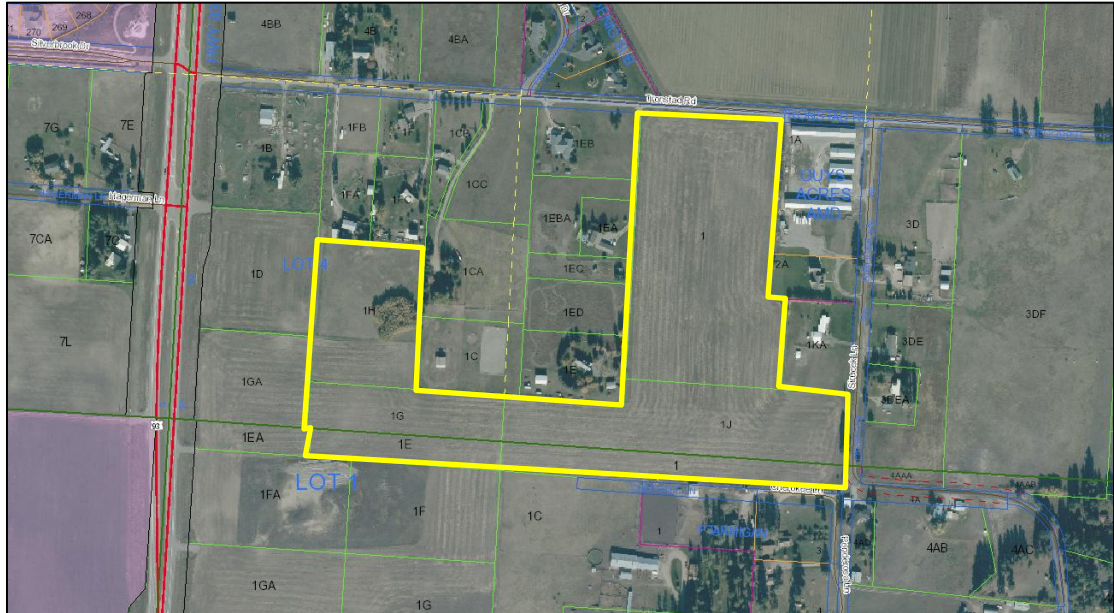
ii. Technical Assistance

Marquardt Surveying
201 3rd Ave W
Kalispell, MT 59901

B. Subject Property Location and Legal Description

The subject property is located between Sirucek Lane and Highway 93, just south of Tronstad Road near Kalispell, MT (see Figure 1 below). The property is approximately 33.73 acres in size and can be legally described as Tracts 1, 1J, 1G and 1H in Section 18, Township 29 North, Range 21 West and Tracts 1 and 1E in Section 19, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property outlined in yellow



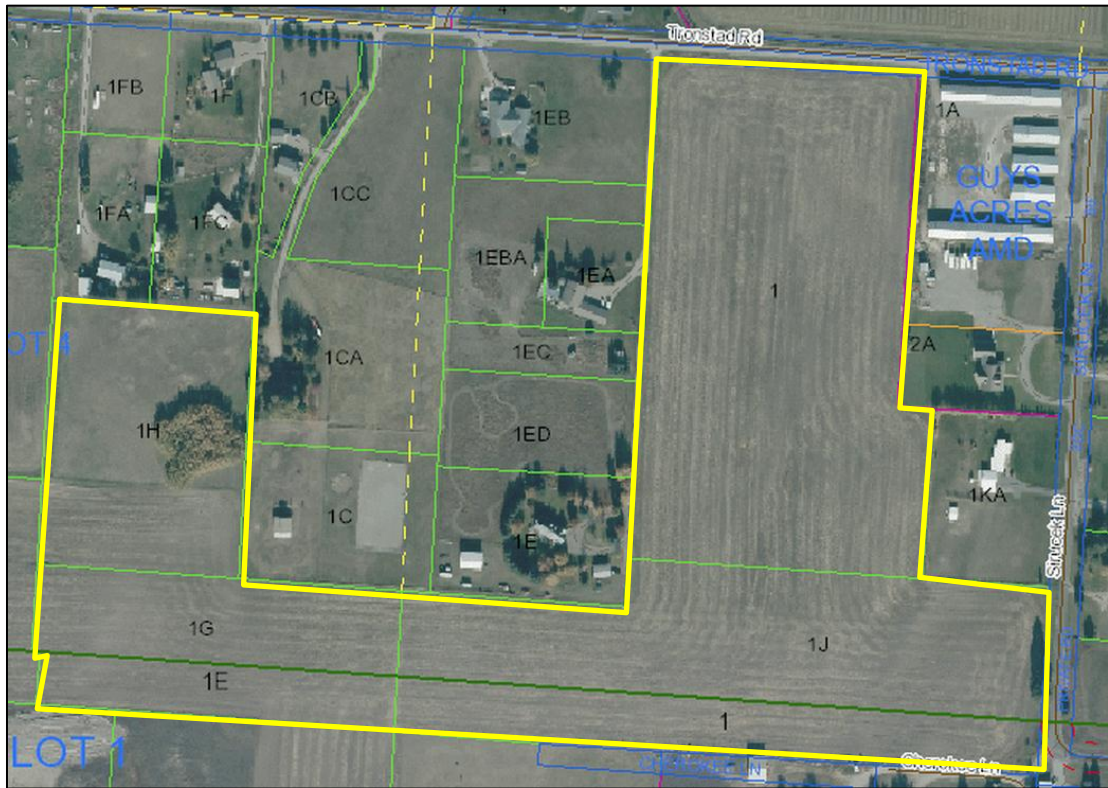
C. Proposed Zoning Map Amendment

The subject property is located within the Highway 93 North Zoning District and is currently zoned ‘SAG-10 Suburban Agricultural’ (see Figure 2 below). As depicted in Figure 3 below, the applicant has requested the zoning map amendment for the property to zone it ‘SAG-5 Suburban Agricultural.’ The SAG-10 designation is defined in Section 3.07 of the Flathead County Zoning Regulations (FCZR) as, ‘A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.’

The SAG-5 designation is defined in Section 3.08 FCZR as, ‘A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.’

The property is relatively flat, currently used for agriculture with no development. The application states as the reason for the amendment, “To have better use of the property and to conform with smaller adjacent properties.” If approved the minimum lot size in SAG-5 would be similar to the lots neighboring the property and would allow for a similar lot size as the neighboring zoning.

Figure 4: Aerial view of subject property (outlined in yellow)

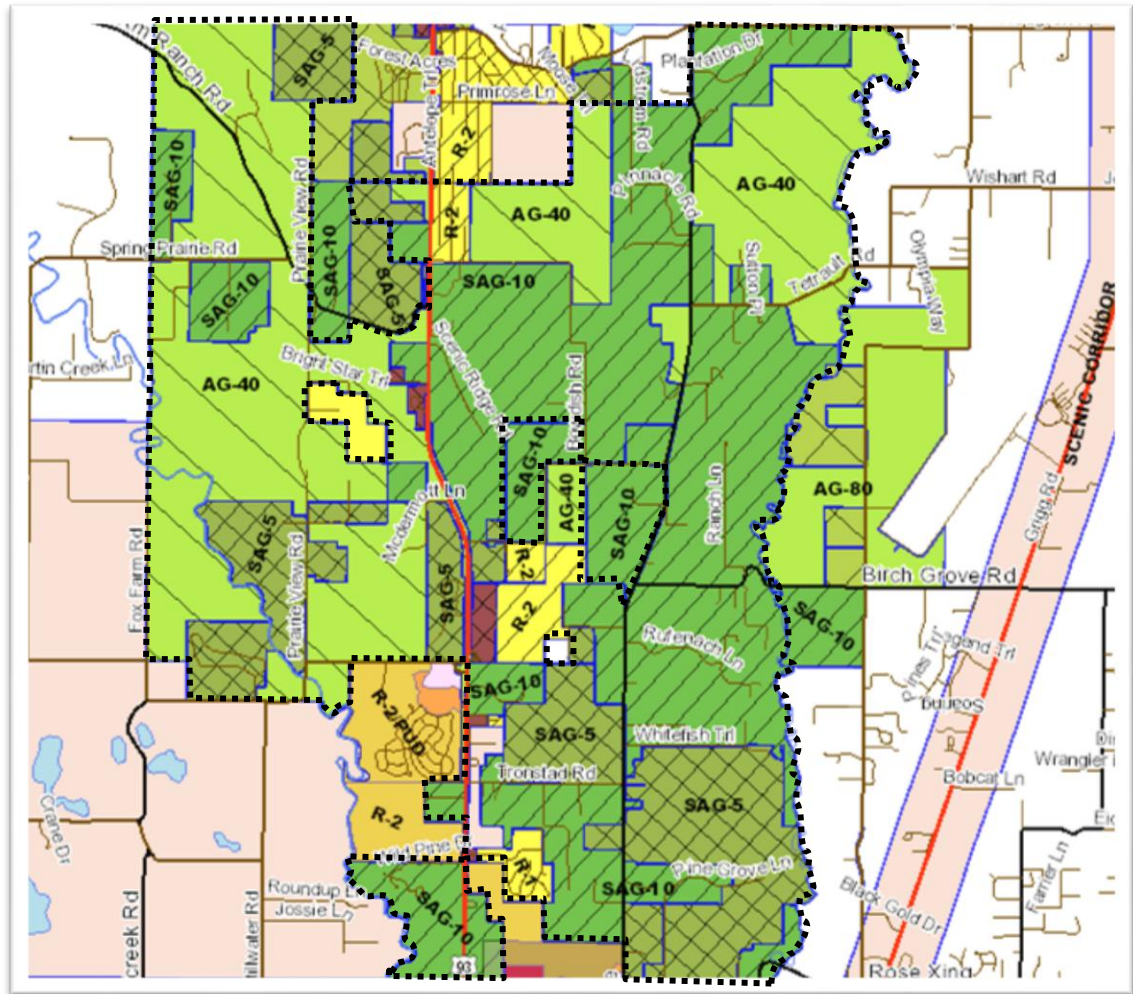


E. Adjacent Zoning and Character of the Overall Zoning District

The subject property is located within the Highway 93 North Zoning District and surrounded by residential and suburban agricultural zones (see Figure 2). The property is bordered on the south and west by SAG-10 and to the north and east are zoned SAG-10 and SAG-5. The zoning map depicts properties to the west and south as B-2HG, however the previous SAG-10 zoning is still in effect on those properties pending the outcome of a court case. Also in the vicinity of the subject property is R-1 zoning. The character of the area surrounding the property is rural residential, agricultural and commercial, as illustrated in Figure 4.

Located south of the subject property are the Ponderosa and Ponderosa North Subdivisions which have average lot sizes of approximately 0.70 acres. The tracts directly south of the subject property range in size 1.1 to 31.9 acres and average 4.9 acres in size. The tracts to the southeast average 6.0 acres with most of the lots between 2.0 and 6.0 acres. To the northeast of the subject property the two tracts average 77.3 acres and to the northwest and west the tracts average 2.7 acres. The properties east of the subject property range in size from 0.1 to 29.6 acres and average 4.4 acres.

Figure 5: Highway 93 North Zoning District (outlined with dashed black line & subject property outlined in red).



When an application appears to have the potential for spot zoning, the “three part test” established by legal precedent in the case of *Little v. Board of County Commissioners* is reviewed specific to the requested map amendment. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a brief review of the three-part test in relation to this application.

i. The Zoning Allows A Use That Differs Significantly From The Prevailing Use In The Area.

The intent of the existing ‘SAG-10 Suburban Agricultural’ zone is to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural use. The purpose of the proposed ‘SAG-5 Suburban Agricultural’ zone is to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural use.

The proposed SAG-5 would allow for the same uses as the adjacent SAG-5 zoning to the north of the subject property and similar uses to the existing SAG-

10 zoning. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning:

1. *'Dairy products processing, bottling, and distribution'* and
2. *'Ranch Employee Housing.'*

There are three permitted uses in the SAG-10 zone that are allowed with a conditional use permit in the SAG-5 zone:

1. *'Cellular tower,'*
2. *'Riding academy, rodeo arena,'* and
3. *'Stable, public.'*

Only two uses are allowed with a conditional use permit in SAG-5 that are not allowed within SAG-10:

1. *'Recreational facility, high impact,'* and
2. *'Recreational vehicle park.'*

Another difference between the existing and proposed zoning is minimum lot area, in the existing SAG-10 zoning the minimum lot area is 10 acres while the proposed SAG-5 zone has a 5 acre minimum lot area.

The general character of the surrounding area is agricultural, single family residential and commercial. The neighboring properties surrounding the subject property and located between Whitefish Stage and Highway 93 are large estate residential, higher density residential and agricultural. The proposed zoning map amendment, if approved, would allow for uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing agricultural zoning and existing on surrounding properties.

ii. The Zoning Applies To A Small Area Or Benefits A Small Number Of Separate Landowners.

Using standard ArcGIS software staff determined that the subject property is located within an SAG-10 zoning district approximately 484.98 acre in size. The area of the proposed zoning map amendment is 33.73 acres or 7.0% of the existing SAG-10 district. Directly north of the subject property is a SAG-5 zoning district which is approximately 1092.43 acres in size. If the zone change is approved the total SAG-5 district to the north would be enlarged and become approximately 1126.16 acres. So even though the property is only 33.73 acres and applies to one land owner the zone change would expand the existing SAG-5 designation currently north of the subject property.

iii. The Zoning Is Designed To Benefit Only One Or A Few Landowners At The Expense Of The Surrounding Landowners Or The General Public And, Thus, Is In The Nature Of Special Legislation.

The subject property is currently owned by a single landowner however, the permitted and conditional uses listed within a SAG-5 zone are similar to the permitted and conditional uses in the current SAG-10 zone. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning (*'Dairy products processing, bottling, and distribution'* and *'Ranch Employee Housing'*) and three permitted uses in the SAG-10 that are allowed with a conditional use permit in SAG-5 (*'Cellular tower,'* *'Riding*

academy, rodeo arena,’ and *‘Stable, public’*). Additionally only two uses are allowed with a conditional use permit within the SAG-5 zone that are not allowed within the SAG-10 zoning (*‘Recreational facility, high impact,’* and *‘Recreational vehicle park’*).

As previously stated the subject property is adjacent to a large SAG-5 district and the same uses that are allowed within the adjacent SAG-5 to the north would be allowed within the proposed SAG-5. The zoning map amendment would allow uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing agricultural zoning and the suburban agricultural zoning of the surrounding area.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #1: The proposed zoning map amendment does not appear to constitute spot zoning because the proposed zone change would allow for the same uses permitted throughout the existing SAG-5 zoning to the north, allow for similar uses to what is allowed within the existing SAG-10, the proposed zone change does not create a zone that applies to a small number of landowners or small area, maintains the rural character of the overall zoning district and would be contiguous to an existing SAG-5 zone.

F. Public Services and Facilities

Sewer:	N/A
Water:	N/A
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Kalispell School District Flathead High School District
Fire:	West Valley Rural Fire District
Police:	Flathead County Sheriff’s Office

G. Criteria Used for Evaluation of Proposed Amendment

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

H. Compliance With Public Notice Requirements

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on September 23, 2015. Legal notice of the Planning Board public hearing on this application was published in the September 27, 2015 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205

[M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed change, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

I. Agency Referrals

Referrals were sent to the following agencies on August 11, 2015:

- Bonneville Power Administration
- City of Kalispell Planning Department
- Flathead City-County Health Department; Environmental Health Services
- Flathead County Public Works/Flathead County Road Department
- Flathead County Sheriff
- Flathead County Solid Waste
- Flathead County Weeds and Parks Department
- Flathead High School District
- Kalispell School District
- West Valley Fire District

III. COMMENTS RECEIVED

A. Public Comments

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for October 14, 2015 and/or the Commissioner's Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
 - Comment: "BPA does not have any objections to the approval of this request at this time." Email dated August 31, 2015.
- Flathead County Solid Waste District
 - Comment: "The Solid Waste District views no negative impact with solid waste issues at this time. The District requests that all solid waste generated at the proposed location be hauled by the by a private licensed hauler. Evergreen Disposal is the licensed (PSC) Public Service Commission licensed hauler in this area." Letter dated August 24, 2015.
- Flathead County Road & Bridge Department
 - Comment: "At this point the County Road Department does not have any comments on this request." Letter dated August 17, 2015.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build Out Analysis

Once a specific zoning designation is applied in a certain area, landowners have certain land uses that are allowed “by-right.” A build-out analysis is performed to examine the maximum potential impacts of full build-out of those “by-right” uses. It is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not “best-case” or “worst-case” scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

i. Current Zoning

The proposed zoning map amendment would change the zoning designation on the subject property from ‘SAG-10 Suburban Agricultural.’ SAG-10 is defined in Section 3.07 FCZR as, ‘*A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*’ The following is a list of permitted uses in an SAG-10 zone:

1. Agricultural/horticultural/silvicultural use.
2. Cellular tower.
3. Class A and Class B manufactured home.
4. Cluster housing.
5. Dairy products processing, bottling, and distribution.
6. Day care home.
7. Dwelling, single-family.
8. Guest house.
9. Home occupation.
10. Homeowners park and beaches.
11. Livestock
12. Nursery, landscaping materials.
13. Park and publicly owned recreational facility.
14. Produce stand.
15. Public transportation shelter station.
16. Public utility service installation.
17. Ranch employee housing.
18. Riding academy, rodeo arena.
19. Stable, public and private.

The following uses are listed as conditional uses in an ‘SAG-10’ zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airfield.
2. Aircraft hangars when in association with properties within or adjoining an airport/landing field.*

3. Animal hospital, veterinary clinic.
4. Bed and breakfast establishment.
5. Camp and retreat center.
6. Caretaker's facility.*
7. Cemetery, mausoleum, columbarium, crematorium.
8. Church and other place of worship.
9. Community center building operated by a non-profit agency.
10. Community residential facility.**
11. Contractor's storage yard.*
12. Dwelling, family hardship.*
13. Electrical distribution station.
14. Extractive industry.
15. Golf course.
16. Golf driving range.
17. Kennel, commercial.*
18. Manufactured home park.
19. Recreational facility, low-impact.
20. School, primary and secondary.
21. Temporary building or structure.*
22. Water and sewage treatment plant.
23. Water storage facility.

The bulk and dimensional standards within SAG-10 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner for a principal structure. While the minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The SAG-10 zoning requires a minimum lot area of 10 acres. As the subject property is currently four tracts and totals 33.73 acres no new lots could be created under the SAG-10 zoning.

ii. Proposed Zoning

As previously stated, the applicant is proposing 'SAG-5 Suburban Agricultural' zoning. SAG-5 is defined in Section 3.08.010 FCZR as, "*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*" The following is a list of permitted uses in an SAG-5 zone:

1. Agricultural/horticultural/silvicultural use.
2. Class A and Class B manufactured home (See Chapter VII – Definitions).
3. Cluster housing (See Chapter V – Performance Standards).
4. Day care home.

5. Dwelling, single-family.
6. Guest house.
7. Home occupation.
8. Homeowners park and beaches.
9. Livestock
10. Nursery, landscaping materials.
11. Park and publicly owned recreational facility.
12. Produce stand.
13. Public transportation shelter station.
14. Public utility service installation.
15. Stable, private.

The following uses are listed as conditional uses in an ‘SAG-5’ zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airfield.
2. Aircraft hangars when in association with properties within or adjoining an airport/landing field.*
3. Animal hospital, veterinary clinic.
4. Bed and breakfast establishment.
5. Camp and retreat center.
6. Caretaker’s facility.*
7. Cellular tower.*
8. Cemetery, mausoleum, columbarium, crematorium.
9. Church and other place of worship.
10. Community center building operated by a non-profit agency.
11. Community residential facility.**
12. Contractor’s storage yard (See Chapter IV – Conditional Use Standards).*
13. Dwelling, family hardship.*
14. Electrical distribution station.
15. Extractive industry.
16. Golf course.
17. Golf driving range.
18. Kennel, commercial.
19. Manufactured home park.
20. Recreational facility, high-impact.
21. Recreational facility, low-impact.
22. Recreational vehicle park.
23. Riding academy and rodeo arena.
24. School, primary and secondary.
25. Stable, public.
26. Temporary building or structure.*
27. Water and sewage treatment plant.
28. Water storage facility.

The bulk and dimensional standards within the proposed SAG-5 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner for the principal structure and a setback for accessory structures of 20 feet for the

front and side-corner and 5 feet from the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The proposed SAG-5 zoning requires a minimum lot area of 5 acres. The subject property totals 33.73 acres and under the proposed SAG-5 zoning 6 lots could be created or two additional lots.

In summary, the bulk and dimensional requirements are the same from SAG-10 to SAG-5, the zoning map amendment would allow uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing SAG-10 and SAG-5 zoning and no additional lots could be created under the current SAG-10 and two could be created with the proposed SAG-5 zone.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as 'Suburban Agricultural.' The proposed Suburban Agricultural zoning classification would appear to comply with the current Suburban Agricultural designation. Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, "This map depicts areas of Flathead County that are legally designated for particular use. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plan. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map." Therefore, staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on policies, rather than maps in the document.

Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

- ❖ **G.2** – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.
- ❖ **G.4** – Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses.
 - **P.4.2** – *Identify lands most suited to agriculture (appropriate soils, access to water, shape and size of parcel, etc.).*
 - **P.4.3** – *Identify a desirable gross density for rural residential development that retains land value, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc).*
 - The zoning map amendment allows greater flexibility to the land owner while still allowing agriculture and forestry uses. The property is currently used for agriculture and could continue to be used for agriculture in the proposed SAG-5 zone.
- ❖ **G.8** – Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.
 - The SAG-5 designation would allow for densities of 1 dwelling unit per 5 acres and would likely not require public services.
- ❖ **G.23** – *Maintain safe and efficient traffic flow and mobility on county roadways.*
 - **P.23.2** – *Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*
 - **P.23.4** – *Recognize areas in proximity to employment and retail centers as more suitable for higher residential densities and mixed use development.*
 - This report contains discussion on the proposals potential burden on transportation below.
- ❖ **G.31** – Growth that does not place unreasonable burden on the school district to provide quality education.
 - Further discussion is contained below in this report on the adequate provision of schools below.
- ❖ **G.32** – Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.
- ❖ **G.33** – Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.

- This report contains discussion on the adequacy of emergency service below.

Finding #2: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the ‘Suburban Agriculture’ land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject property is located within the West Valley Fire District and the nearest fire and emergency response center is located approximately 1 mile southeast of the property on Whitefish Stage. The West Valley Fire Department would respond in the event of a fire or medical emergency. The West Valley Fire Department did not provide comments on this proposal.

The property is bordered to the north by Tronstad Road and to the east by Sirucek Lane. Sirucek Lane a 20-foot wide two-lane paved private road. Tronstad Road is a 20-foot wide two-lane paved local county road within a 60 foot easement. Both roads appear adequate to provide ingress and egress for emergency services.

The subject property is not located within the Wildland Urban Interface (WUI) or within a fire district priority area and the proposed SAG-5 zoning has the potential to increase the density of the SAG-5 zoning by 2 additional lots.

The subject property is flat and relatively open. According to FEMA FIRM Panel 30029C 1415G, the property is located within an unshaded Zone X an area determined to be outside the 0.2% annual chance floodplain. There is a low chance of flooding on the subject property.

Finding #3: The proposed map amendment will not impact safety from fire and other danger because the property is not located in the WUI, is located approximately 1 mile from the nearest fire station and is not in the 100 year floodplain.

2. Promote public health, public safety, and general welfare;

The property is located within the West Valley Fire District and about 1 mile northwest of the nearest fire and emergency response center located on Whitefish Stage. The West Valley Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff’s Department provides police services to the subject property.

According to the applicant, “The subject properties utilize access from Tronstad Road, 60 foot county road, Sirucek Lane, a 60 foot private road.” Tronstad Road and Sirucek Lane appears adequate to provide ingress and egress for emergency services which would help to ensure adequate public health and safety.

The intent of the existing SAG-10 zone is to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural use. The purpose of the proposed SAG-5 zone is to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural use.

The proposed SAG-5 would allow for the same uses as the adjacent SAG-5 zoning to the north of the subject property and similar uses to the existing SAG-10 zoning. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning:

1. *'Dairy products processing, bottling, and distribution'* and
2. *'Ranch Employee Housing.'*

There are three permitted uses in SAG-10 that are allowed with a conditional use permit in SAG-5:

1. *'Cellular tower,'*
2. *'Riding academy, rodeo arena,'* and
3. *'Stable, public.'*

Only two uses are allowed with a conditional use permit in SAG-5 that are not allowed within the SAG-10 zoning:

1. *'Recreational facility, high impact,'* and
2. *'Recreational vehicle park.'*

Another difference between the existing and proposed zoning is minimum lot area, in the existing SAG-10 zoning the minimum lot area is 10 acres while the proposed SAG-5 zone has a 5 acre minimum lot area.

Finding #4: The proposed amendment does not appear to have a negative impact on public health, safety and general welfare because the property is served by the Flathead County Sheriff, the West Valley Fire Department and future development would be similar to uses already permitted and conditionally permitted in the current SAG-10 and adjacent SAG-5 zoning.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The minimum lot size in the current SAG-10 zoning designation is 10-acres and the minimum lot size in the proposed SAG-5 is 5 acres. Because the subject property is currently 33.73 acres in size it could be subdivided into a total of 6 parcels. The property is currently divided into 4 parcels and therefore two additional lots could be created. This has the potential to generate two additional single family residences and approximately 20 additional average daily trips (ADT). The impact on schools students, the demand on the parks, water, sewerage and other public requirements would likely be minimal as a result of this proposal.

The application does not state whether the proposal will utilize individual wells and septic or public sewer and water. The applicant will be required to work with Flathead City-County Health Department to develop an on-site well and sewer system to meet the needs of any future development if individual

septics and wells are utilized. No comments were received from the Flathead City-County Health Department.

Primary access to the property is currently off Sirucek Lane via Tronstad Road. Sirucek Lane is a 20-foot wide two-lane paved private road within a 30 to 60 foot easement. Tronstad Road is a 20-foot wide two-lane paved local county road within a 60 foot easement. Comments received from the Flathead County Road and Bridge Department stated, “At this point the County Road Department does not have any comments on this request.” The potential increase of 20 ADT would likely have a minimal impact on transportation.

Finding #5: The proposed amendment would facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements because the subject property is currently 33.73 acres in size and could be further subdivided into two additional lots, the County Road Department comments indicate no concerns with this proposal and any new development would require review from the Flathead City-County Health Department for water and wastewater.

iii. In evaluating the proposed map amendment, consideration shall be given to:

1. The reasonable provision of adequate light and air;

The minimum lot area for the proposed SAG-5 zone is 5 acres and the minimum lot area for the existing SAG-10 zone is 10 acres. The maximum building height within the proposed SAG-5 zone is 35 feet which is the same as the existing SAG-10. The permitted lot coverage is 20% for the SAG-10 zoning classification and 25% for the proposed SAG-5 zoning classification.

The bulk and dimensional requirements under SAG-5 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner for the principal structure. The minimum setback for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. There are also requirements for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The setbacks for the proposed zoning classification are identical to those of the current zoning. The bulk and dimensional requirements for the SAG-5 designation have been established to provide for a reasonable provision of light and air.

Finding #6: The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation and the lot could not be further subdivided under the proposed zoning.

2. The effect on motorized and non-motorized transportation systems;

Primary access to the property is currently off Sirucek Lane and Tronstad Road. Sirucek Lane is a 20-foot wide two-lane paved private road within a 30 to 60 foot easement. Tronstad Road is a local county road within a 60 foot easement. According to the applicant, "Changing the zoning to SAG-5 will cause those two properties to be in compliance of the zoning, therefore the zone change would have a minor impact."

Comments received from the Flathead County Road and Bridge Department stated, "At this point the County Road Department does not have any comments on this request."

Traffic counts from the Flathead County Road and Bridge Department indicate 646 vehicle trips per day East of U.S. Highway 93 and 738 vehicle trips per day west of Whitefish Stage (counts taken October 5th through the 9th of 2007) on Tronstad Road. Because the subject property is currently 33.73 acres in size it could be subdivided into a total of 6 parcels. The property is currently 4 parcels and therefore two additional parcels could be created. This has the potential to generate two additional single family residences and approximately 20 additional average daily trips (ADT). It is anticipated that the proposed zone change would have a minimal impact on motorized transportation systems.

There is no existing bike/pedestrian facilities currently located along Sirucek Lane or Tronstad Road and no future bike/pedestrian trails are identified by the Flathead County Trails Plan for Sirucek Lane or Tronstad Road. It is anticipated that the proposal will have minimal impact on non-motorized transportation.

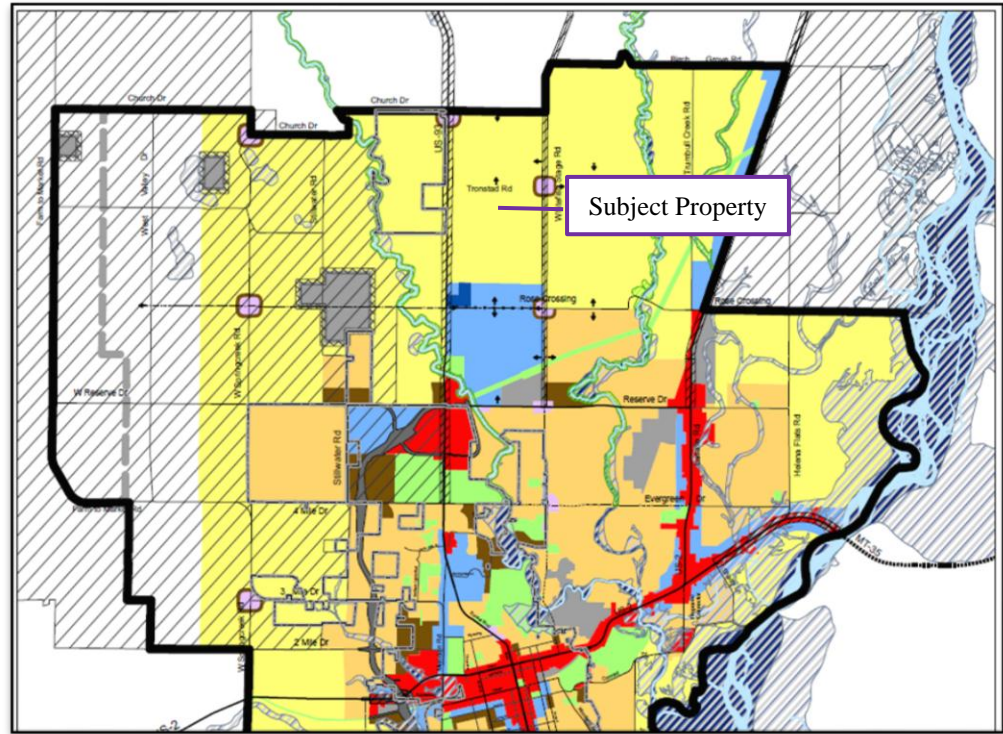
Finding #7: Effects on motorized and non-motorized transportation systems will be minimal because the proposal would allow for two additional lots, has the potential to generate 20 average daily trips, the Flathead County Road and Bridge Department had no concerns with the proposal and neither Sirucek Lane nor Tronstad Road is identified as a future bike/pedestrian trail.

3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The subject property is located approximately one tenth of a mile to the East of the City of Kalispell and located within the boundary of the Kalispell Growth Policy. The City of Kalispell Growth Policy Future Land Use Map, adopted by the City of Kalispell in 2003 includes the subject property. The Kalispell Growth Policy Planning Area Map designated the property as "Suburban Residential." According to the Kalispell Growth Policy the "Suburban Housing" states, "a. *Densities should be appropriate to the limitations of the particular site, and should not exceed two or four dwellings per gross acre. B. The suburban residential designation is intended to reduce density and development impacts in sensitive areas and existing rural neighborhoods.*" The "Suburban Residential" on the map would seem to generally correspond with the "Suburban Housing" designation within the text

of the Growth Policy. The proposed SAG-5 zoning would not exceed two to four dwelling per gross acre. Additionally comments were sought from the City of Kalispell but no comments were received. It appears that the proposed SAG-5 zoning designation would be compatible with urban growth in the vicinity of Kalispell.

Figure 6: Northern portion of City of Kalispell Growth Policy Future Land Use Map



Finding #8: The property is located within the extent of the City of Kalispell Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Kalispell because no comments were received from the City of Kalispell to indicate concern and it is less dense than the Kalispell designation of “Suburban Housing.”

4. The character of the district(s) and its peculiar suitability for particular uses;

The Highway 93 North Zoning District is mostly a mixture of agricultural, suburban agricultural and residential zoning, with some businesses located along Highway 93. The property is currently vacant. The surrounding properties to the south appear to be single family residential. To the east of the property is mini-storage and single family residential.

The general character of the surrounding area is agricultural, single family residential and commercial. The neighboring properties, located between Whitefish Stage and Highway 93, are large estate residential, higher density residential and agricultural. The proposed zoning map amendment, if approved, would allow for uses that are typical of suburban agricultural

zoning districts and similar to uses that are allowed under the existing agricultural zoning and existing on surrounding properties.

The application states, “The zone change is consistent with the character of the area and gives reasonable consideration to the uses of the SAG-5 suburban agricultural zoning on the adjacent properties.”

As previously discussed, the permitted and conditional uses listed within a SAG-5 zone are similar to the permitted and conditional uses in the current SAG-10 zone. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning (*‘Dairy products processing, bottling, and distribution’* and *‘Ranch Employee Housing’*) and three permitted uses in the SAG-10 that are allowed with a conditional use permit in SAG-5 (*‘Cellular tower,’ ‘Riding academy, rodeo arena,’* and *‘Stable, public’*). Additionally only two uses are allowed with a conditional use permit within the SAG-5 zone that are not allowed within the SAG-10 zoning (*‘Recreational facility, high impact,’* and *‘Recreational vehicle park’*). All other uses are the same between the SAG-10 and SAG-5 zoning and the proposed SAG-5 zone would allow for the same uses as the SAG- 5 to the north.

Located south of the subject property are the Ponderosa and Ponderosa North Subdivisions which have average lot sizes of approximately 0.70 acres. The tracts directly south of the subject property range in size 1.1 to 31.9 acres and average 4.9 acres in size. The tracts to the southeast average 6.0 acres in size with most of the lots between 2.0 and 6.0 acres. To the northeast of the subject property the two tracts average 77.3 acres and to the northwest and west the tracts average 2.7 acres. The properties east of the subject property range in size from 0.1 to 29.6 acres and average 4.4 acres. Many of the neighboring parcels have smaller lot sizes than what is permitted in the proposed SAG-5.

Finding #9: The character of the proposed zoning map amendment appears suitable for the particular district because the uses permitted and conditionally permitted within the SAG-5 zoning are similar to what is allowed and existing in the current SAG-10 zoning and neighboring SAG-5 zoning and many adjacent parcels are smaller than what is permitted in the proposed SAG-5 zoning.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The subject property is located within the Highway 93 North Zoning District and surrounded by agricultural and suburban agricultural zones (see Figure 2). The subject property is bordered by SAG-10, SAG-5 and R-1. The character of the area surrounding the property is rural residential and agricultural. According to the applicant, “Adjacent properties are currently zoned SAG-5 and the value of buildings will be conserved as well as the use of the land by encouraging consistent zoning.”

The uses allowed within the existing SAG-10 are similar to what are allowed

within the proposed SAG-5 zone and the use allowed within the adjacent SAG-5 is the same as what are allowed within the proposed SAG-5 zone. The requested zoning amendment appears to conserve the value of buildings and encourage the most appropriate use of the land throughout the jurisdictional area because the uses permitted would be the same as the uses permitted in the neighboring SAG-5 and SAG-10.

Finding #10: This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the SAG-5 designation allows for similar uses to the surrounding SAG-10, allows for the same uses as the adjacent SAG-5 designation and the character of the area surrounding the property is rural residential and agricultural which is in line with the proposed SAG-5 zone.

iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The location of the proposed zoning map amendment is not directly adjacent to any city. The nearest municipality is the City of Kalispell, the city limits of which are located approximately 0.1 miles west of the property. The City of Kalispell Planning Department was sent an agency referral but has not provided comment on this proposal.

The closest zoning within the City of Kalispell appears to be R-2/PUD approximately 0.25 miles south and R-2 approximately 0.1 miles to the west. According to Chapter 27.05 of the Kalispell Zoning Ordinance the R-2 district is, *‘A district intended to provide adequate lot areas for lower density residential development; should have good thoroughfare access, and be in proximity to community and neighborhood facilities, i.e., schools, parks, shopping areas, etc. This development will normally require all public utilities. This zoning district would typically be found in areas designated as suburban residential on the Kalispell Growth Policy Future Land Use Map.’* The minimum lot size in R-2 is 10,000 square feet which is less than the minimum lot sizes of the existing SAG-10 and the proposed SAG-5. The R-2 district does not allow for many of the uses allowed in the existing SAG-10 or proposed SAG-5, such as agriculture, stables, rodeo arenas, riding academies, airfield, kennels, etc.

Many of the recent properties annexed by the City of Kalispell have been zoned PUDs. If the neighboring properties were annexed into the city, based on recent trends, it would likely be zoned PUD. PUDs allow for greater flexibility and multiple uses. According to the Kalispell Zoning Ordinance, a PUD (Planned Unit Development) District, *“shall serve as an overlay zoning district. It shall function in concert with one or more of the underlying zones to provide a comprehensive, integrated development plan which will serve to modify the underlying zone and, where appropriate, subdivision standards with the intent of providing flexibility of architectural design and density as well as providing the option to mix land uses and densities while preserving and enhancing the integrity and environmental values of an area.”* Because of the PUD overlay, it is difficult to identify the precise zoning requirements for a subject property.

The city of Kalispell does not have a suburban agricultural zone and the R-1 zone which allows for agricultural and horticultural uses has a minimum lot size of 20,000 square feet. The R-1 zone does not allow for many of the uses in SAG-5 or SAG-10, such as a stable, rodeo arena, riding academy, kennel etc. Both the proposed SAG-5 and existing SAG-10 have minimum lots sizes much larger than the minimum lot size of an R-1 or the nearby R-2 zoning. Because the City does not have suburban residential zoning that accommodates larger lots or many of the uses allowed in SAG-5, the amendment appears to be, as nearly as possible, compatible with the zoning ordinance of the City of Kalispell.

Finding #11: The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the City does not have suburban residential zoning that accommodates larger lots or allow many uses allowed in the proposed SAG-5, such as stables, rodeo arenas, riding academies, airfield or kennels.

V. SUMMARY OF FINDINGS

- 1) The proposed zoning map amendment does not appear to constitute spot zoning because the proposed zone change would allow for the same uses permitted throughout the existing SAG-5 zoning to the north, allow for similar uses to what is allowed within the existing SAG-10, the proposed zone change does not create a zone that applies to a small number of landowners or small area, maintains the rural character of the overall zoning district and would be contiguous to an existing SAG-5 zone.
- 2) The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the 'Suburban Agriculture' land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.
- 3) The proposed map amendment will not impact safety from fire and other danger because the property is not located in the WUI, is located approximately 1 mile from the nearest fire station and is not in the 100 year floodplain.
- 4) The proposed amendment does not appear to have a negative impact on public health, safety and general welfare because the property is served by the Flathead County Sheriff, the West Valley Fire Department and future development would be similar to uses already permitted and conditionally permitted in the current SAG-10 and adjacent SAG-5 zoning.
- 5) The proposed amendment would facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements because the subject property is currently 33.73 acres in size and could be further subdivided into two additional lots, the County Road Department comments indicate no concerns with this proposal and any new development would require review from the Flathead City-County Health Department for water and wastewater.
- 6) The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and

dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation and the lot could not be further subdivided under the proposed zoning.

- 7) Effects on motorized and non-motorized transportation systems will be minimal because the proposal would allow for two additional lots, has the potential to generate 20 average daily trips, the Flathead County Road and Bridge Department had no concerns with the proposal and neither Sirucek Lane nor Tronstad Road is identified as a future bike/pedestrian trail.
- 8) The property is located within the extent of the City of Kalispell Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Kalispell because no comments were received from the City of Kalispell to indicate concern and it is less dense than the Kalispell designation of “Suburban Housing.”
- 9) The character of the proposed zoning map amendment appears suitable for the particular district because the uses permitted and conditionally permitted within the SAG-5 zoning are similar to what is allowed and existing in the current SAG-10 zoning and neighboring SAG-5 zoning and many adjacent parcels are smaller than what is permitted in the proposed SAG-5 zoning.
- 10) This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the SAG-5 designation allows for similar uses to the surrounding SAG-10, allows for the same uses as the adjacent SAG-5 designation and the character of the area surrounding the property is rural residential and agricultural which is in line with the proposed SAG-5 zone.
- 11) The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the City does not have suburban residential zoning that accommodates larger lots or allow many uses allowed in the proposed SAG-5, such as stables, rodeo arenas, riding academies, airfield or kennels.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with most of the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: EKM